

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:)	
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FRIGG)	
)	
Serial No.: 10/735,854)	Group Art Unit: 3733
)	
Filed: December 16, 2003)	Examiner: R. Schaffer
)	
For: OSTEOSYNTHETIC IMPLANT)	
WITH AN EMBEDDED HINGE JOINT)	
)	
Confirmation No. 3166)	

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REPLY BRIEF UNDER 37 C.F.R. § 41.41

In response to the Examiner's Answer mailed on August 6, 2008 to the revised Appeal Brief filed May 16, 2008, and pursuant to 37 C.F.R. § 41.41, Appellant presents this Reply Brief in the above-identified application.

This is an appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 2-7, 13-16 and 20 in the Final Office Action dated October 17, 2007.

1. Status of the Claims

Claim 1 has been cancelled. Claims 8-12, 17-19, and 21-36 have been withdrawn from consideration. Claims 2-7, 13-16, and 20 have been rejected in the final Office Action of October 17, 2007. The rejection of claims 2-7, 13-16, and 20 is being appealed.

2. Grounds of Rejection to be Reviewed on Appeal

I. Whether claim 7 violates the written description requirement under 35 U.S.C. § 112, ¶1.

II. Whether claims 2-7, 13-16, and 20 are anticipated under 35 U.S.C. § 102(a) by United States Patent No. 4,029,091 to von Bezold et al. ("von Bezold").

3. Argument

The Examiner asserts that the summary of the claimed subject matter in the Brief is deficient. Appellant disagrees. Rule 41.37(c) (1)(v) describes the required summary as follows: "[a] concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters." The summary thus requires a "concise explanation" of what is in the independent claim or claims in the appeal, and the "concise explanation" "shall refer to the specification by page and line number, and to the drawing, if any, by reference characters." Appellant has done this. The summary describes only claim 2 because claim 2 is the only independent claim on appeal. Moreover, the Examiner states that Appellant "cites only the specification at page 8, lines 11-14, and Figure 2, as relevant to" the recited pivot-mounted pins, as if mentioning just that portion of the specification is problematic. Nothing in the rule requires Appellant to include in the summary every instance of support for a particular limitation, which appears to be what the Examiner is arguing. If that were the rule, then the summary would hardly amount to a "concise explanation." As stated in the opening paragraph of the summary, the summary was intended to be exemplary, which means that it would not exhaustively cite to every

instance in the specification that is relevant to the claim limitations. The rule does not require such an exhaustive description; therefore, the summary is in compliance with the relevant rule.

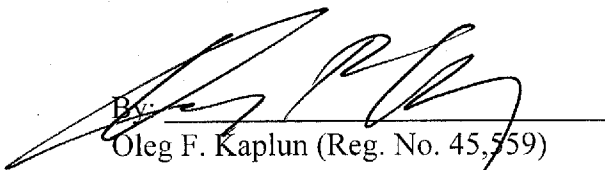
With respect to the rejection based on Bezold, Appellant renews its reliance on the arguments made in the Brief. In addition, Appellant notes that the Examiner has not met the burden of establishing that the connecting members 18a and 18b of Bezold are pins. Claim 2 states that the "connecting elements are pins...." Connecting members 18a and 18b are shown in the drawings as flat, curved bands, a shape that hardly evokes the image of a pin in the mind of one of ordinary skill in the art. Therefore, for at least this additional reason as well, the rejection ought to be reversed.

4. Conclusion

For the reasons set forth above, Appellant respectfully requests that the Board reverse the final rejections of the claims by the Examiner and indicate that claims 2-7, 13-16 and 20 are allowable.

Respectfully submitted,

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